

AMENDED IN ASSEMBLY JULY 14, 2003
AMENDED IN ASSEMBLY JULY 2, 2003
AMENDED IN ASSEMBLY JUNE 26, 2003
AMENDED IN SENATE MAY 13, 2003
AMENDED IN SENATE MAY 7, 2003
AMENDED IN SENATE APRIL 24, 2003

SENATE BILL

No. 700

Introduced by Senators Florez and Sher

February 21, 2003

An act to amend Section 42310 of, and to add Sections 39011.5, 39023.3, 40724, 40724.5, 40731, 41511.5, 42301.16, 42301.17, and 44559.9 to, the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, Florez. Air quality: emissions: stationary sources: agricultural operations.

(1) Existing law authorizes the board of every air quality management district and air pollution control district to establish a permit system that requires any person that uses certain types of equipment that may cause the emission of air contaminants to obtain a permit. Existing law exempts vehicles and certain types of equipment from those permit requirements.

This bill would eliminate that exemption for any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals. To the extent that the bill would increase the number of permits that a district board, electing to establish a permit system prior to

January 1, 2004, would be required to issue, the bill would impose a state-mandated local program.

(2) Existing law defines various terms governing the construction of air pollution control laws in the state, and authorizes the state board to revise those definitions to conform with federal law.

This bill would define the terms “agricultural stationary source of air pollution” and “fugitive emissions,” and would prohibit, notwithstanding the existing authority, the state board from revising those definitions.

(3) The existing federal Clean Air Act requires districts to adopt local programs for issuing operating permits to major stationary sources of air pollutants. The existing act defines a stationary source as any building, structure, facility, or installation that emits or may emit any air pollutant.

This bill would require each district that is designated a serious federal nonattainment area for particulate matter of 10 microns or less or for 2.5 microns or less to adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation requiring best available control measures (BACM) and best available retrofit control technology (BARCT) for agricultural practices at agricultural stationary sources of air pollution, and for precursor and fugitive emissions from those agricultural practices by the earliest feasible date, but not later than January 1, 2006, and would require each district subject to those requirements to comply with a schedule for public hearing, adoption, and implementation of the final rule.

The bill would require each district that is designated a moderate federal nonattainment area or a state nonattainment area for particulate matter of 10 microns or less or for 2.5 microns or less to adopt and implement control measures necessary to reduce emissions from agricultural practices at agricultural stationary sources of air pollution and from precursor and fugitive emissions from those activities by the earliest feasible date, unless the district determines that those sources do not significantly cause or contribute to a violation of state or federal standards.

The bill would require the California Air Pollution Control Officers Association (CAPCOA), in consultation and cooperation with the state board and other interested parties, to develop a clearinghouse of suggested control measures for agricultural stationary sources of air pollution and emissions from agricultural operations to reduce or eliminate emissions of regulated air pollutants or emissions of



precursors that form regulated air pollutants. The bill would require the districts to submit suggested control measures for agricultural sources to CAPCOA, and would require that association to make those suggested control measures available to districts throughout the state.

This bill would require that an agricultural source of air pollution be regarded as a stationary source in the state for the purposes of the federal act. The bill would also require a district, when determining if an agricultural stationary source is a major stationary source of air pollution for the purposes of the federal act, to include, *to the extent possible*, precursor emissions from those sources, unless the state board or a district determines that the precursor does not cause or contribute to air pollution or the formation of air pollutants.

The additional duties for districts under the bill would impose a state-mandated local program.

(4) Existing law establishes the Capital Access Loan Program for Small Businesses, administered by the California Pollution Control Financing Authority, which provides loans through participating financial institutions to entities authorized to conduct business in the state and whose primary business location is in the state.

This bill would require the authority to expand the program to include outreach to financial institutions that service agricultural interests in the state for the purposes of funding air pollution control measures.

(5) Under existing law, any person who violates a rule, regulation, permit, or order of a district is guilty of a misdemeanor. Because this bill would increase the number of people who are subject to that provision, it would expand the scope of a crime, thereby imposing a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Agricultural operations necessary for growing crops or raising fowl or animals are a significant source of directly emitted particulates, and precursors of ozone and fine particulate matter. These emissions have a significant adverse effect on the ability of areas of the state, including, but not limited to, the San Joaquin Valley, to achieve health-based state and federal ambient air quality standards.

(2) Since 1999, the agriculture industry has reduced emissions of oxides of nitrogen (NO_x) by more than 2000 tons per year, emissions of particulate matter of 10 microns in diameter (PM 10) by more than 500 tons per year, and emissions of volatile organic compounds (VOCs) from agricultural chemicals by more than 20 percent. According to the state board, however, agricultural sources of air pollution still contribute twenty-six percent of the smog-forming emissions in the San Joaquin Valley.

(3) In the San Joaquin Valley, a large portion of the sources of PM 10 emissions are areawide sources whose emissions are directly related to growth in population and the resulting vehicle miles traveled. According to the state board, however, agricultural sources of air pollution account for over fifty percent of the particulate air pollution generated in the valley during the fall, amounting to over 170 tons per day of emissions.

(4) All parties living or operating a business in an area that has been classified as being a nonattainment area with respect to the attainment of federal or state ambient air quality standards share the responsibility of reducing emissions from all criteria pollutants.

(5) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) prohibits the state from adopting emission standards or limitations less stringent than those established under the federal act, including limitations on emissions from agricultural sources.

(6) Division 26 (commencing with Section 39000) of the Health and Safety Code establishes numerous policies and programs to reduce air pollutants for the protection of public health.

(7) The purpose of the act adding this section is to establish a new program at the state and regional levels to reduce air emissions from agricultural sources in order to protect public health and the environment.

(b) It is therefore the intent of the Legislature to require the State Air Resources Board and air quality management districts and air pollution control districts in the state to regulate stationary, mobile, and area sources of agricultural air pollution.

SEC. 2. Section 39011.5 is added to the Health and Safety Code, to read:

39011.5. (a) “Agricultural stationary source of air pollution” or “agricultural stationary source” means a source of air pollution or a group of sources on contiguous property under common ownership or control that meets any of the following criteria:

(1) Is a confined animal facility, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, milking parlor, or system for the collection, storage, treatment, and distribution of liquid and solid manure, if domesticated animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are corralled, penned, or otherwise cause to remain in restricted areas for commercial agricultural purposes and feeding is by means other than grazing.

(2) Is an internal combustion engine used in the production of crops or the raising of fowl or animals, except an engine that is used to propel implements of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003. Notwithstanding subdivision (b) of Section 39601, the state board may not revise this definition for the purposes of this section.

(3) Is a Title V source, as that term is defined in Section 39053.5, or is a source that is otherwise subject to regulation by a district pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) Nothing in this section limits the authority of a district to regulate a source over which it otherwise has jurisdiction pursuant to this division.

SEC. 3. Section 39023.3 is added to the Health and Safety Code, to read:

1 39023.3. “Fugitive emissions” mean those emissions that
2 cannot pass through a stack, chimney, vent, or other functionally
3 equivalent opening. Notwithstanding subdivision (b) of Section
4 39601, the state board may not revise this definition for the
5 purposes of this section.

6 SEC. 4. Section 40724 is added to the Health and Safety Code,
7 to read:

8 40724. (a) Each district that is designated a serious federal
9 nonattainment area for particulate matter of 10 microns or less or
10 for 2.5 microns or less shall adopt, implement, and submit for
11 inclusion in the state implementation plan, a rule or regulation
12 requiring best available control measures (BACM) and best
13 available retrofit control technology (BARCT) for agricultural
14 practices at agricultural stationary sources of air pollution,
15 including, but not limited to, tilling, discing, cultivation, and
16 raising of fowl or animals, and for precursor and fugitive
17 emissions from those agricultural practices by the earliest feasible
18 date, but not later than January 1, 2006. Each district that is subject
19 to this subdivision shall comply with the following schedule with
20 respect to the rule or regulation imposing BACM and BARCT:

21 (1) On or before March 1, 2004, notice and hold at least one
22 public workshop for the purposes of accepting public testimony on
23 the rule or regulation.

24 (2) On or before January 1, 2005, adopt the final rule or
25 regulation.

26 (3) On or before January 1, 2006, commence implementation
27 of the rule or regulation.

28 (b) Nothing in this section shall delay or otherwise affect any
29 action taken by a district to reduce emissions of air contaminants
30 from agricultural sources, or any other requirements imposed on
31 a district or a source of air pollution pursuant to the federal Clean
32 Air Act (42 U.S.C. Sec. 7401 et seq.).

33 SEC. 5. Section 40724.5 is added to the Health and Safety
34 Code, to read:

35 40724.5. (a) Each district that is designated a moderate
36 federal nonattainment area or a state nonattainment area for
37 particulate matter of 10 microns or less or for 2.5 microns or less
38 and that is not subject to the requirements of Section 40724, shall
39 adopt and implement control measures necessary to reduce
40 emissions from agricultural practices at agricultural stationary

1 sources of air pollution, including, but not limited to, tilling,
2 discing, cultivation, and raising of fowl or animals, and from
3 precursor and fugitive emissions from those activities by the
4 earliest feasible date, unless the district finds and determines at a
5 public hearing, based upon substantial evidence, that those sources
6 do not significantly cause or contribute to a violation of state or
7 federal standards.

8 (b) Nothing in this section shall delay or otherwise affect any
9 action taken by a district to reduce emissions of air contaminants
10 from agricultural sources, or any requirements imposed on a
11 district or a source of air pollution pursuant to the federal Clean Air
12 Act (42 U.S.C. Sec. 7401 et seq.).

13 SEC. 6. Section 40731 is added to the Health and Safety Code,
14 to read:

15 40731. The California Air Pollution Control Officers
16 Association (CAPCOA), in consultation and cooperation with the
17 state board and other interested parties, shall develop a
18 clearinghouse of suggested control measures for agricultural
19 stationary sources of air pollution and emissions from agricultural
20 operations to reduce or eliminate emissions of regulated air
21 pollutants or emissions of precursors that form regulated air
22 pollutants. Each district shall submit suggested control measures
23 to CAPCOA, and CAPCOA shall make available to all districts,
24 suggested control measures for all of the following in the
25 clearinghouse:

26 (a) Operations that create fugitive dust emissions, including,
27 but not limited to, discing, tilling, material handling and storage,
28 and travel on unpaved roads.

29 (b) Confined animal facilities, including, but not limited to,
30 any structure, building, installation, barn, corral, coop, feed
31 storage area, or milking parlor, including, but not limited to, a
32 system for the collection, storage, treatment, and distribution of
33 solid manure from domestic animals, including, but not limited to,
34 cattle, calves, horses, sheep, goats, swine, rabbits, chickens,
35 turkeys, or ducks, if those animals are corralled, penned, or
36 otherwise caused to remain in restricted areas for commercial
37 agricultural purposes, and feeding is by means other than grazing.

38 (c) Internal combustion engines used in the production of crops
39 or the raising of animals or fowl, except an engine that is used to
40 propel implements of husbandry, as that term is defined in Section

1 36000 of the Vehicle Code, as that section existed on January 1,
2 2003. Notwithstanding subdivision (b) of Section 39601, the state
3 board may not revise that definition for the purposes of this
4 section.

5 (d) Other equipment, operations, or activities associated with
6 the growing of crops or the raising of animals or fowl, that emit,
7 or cause to be emitted, any regulated air pollutant, or any precursor
8 to any regulated air pollutant.

9 SEC. 7. Section 41511.5 is added to the Health and Safety
10 Code, to read:

11 41511.5. (a) An agricultural source of air pollution shall be
12 regarded as a stationary source, as that term is defined in ~~Section~~
13 ~~7411 of Title 42 of the United States Code. the federal Clean Air~~
14 ~~Act (42 U.S.C. Sec. 7401 et seq.).~~

15 (b) For the purpose of determining if an agricultural stationary
16 source of air pollution is a major stationary source of air pollution,
17 the state board and a district shall include, *to the extent possible*,
18 precursor emissions, including, but not limited to, ammonia,
19 nitrogen oxides, sulfur oxides, reactive organic gases, and fugitive
20 emissions from those sources, unless the state board or a district
21 determines, based upon clear and convincing scientific evidence,
22 that the precursor does not cause or contribute to air pollution or
23 the formation of air pollutants.

24 (c) Nothing in this section shall limit or abridge the authority
25 granted pursuant to this division to the state board or a district to
26 regulate emissions of air contaminants from agricultural sources.

27 SEC. 8. Section 42301.16 is added to the Health and Safety
28 Code, to read:

29 42301.16. In addition to complying with the requirements of
30 this chapter, a permit system established by a district pursuant to
31 Section 42300 shall ensure that any agricultural stationary source
32 that is required to obtain a permit pursuant to Title I (42 U.S.C.
33 Sec. 7401 et seq.) and Title V (42 U.S.C. Sec. 7661 et seq.) of the
34 federal Clean Air Act are required by district regulation to obtain
35 a permit in a manner that is consistent with the federal
36 requirements.

37 SEC. 9. Section 42301.17 is added to the Health and Safety
38 Code, to read:

39 42301.17. (a) A district may adopt by regulation a program
40 under which the district does not require a permit to be obtained

1 by an agricultural stationary source of air pollution that the district
2 may otherwise require to obtain a permit if the owner or operator
3 of the source has taken the following actions to reduce emissions
4 from the source:

5 (1) Removed all internal combustion engines used in the
6 production of crops or the raising of fowl or animals, except an
7 engine that is used to propel implements of husbandry, at the
8 source and replaced them with engines that meet or exceed the
9 most stringent standards adopted by the state board and the United
10 States Environmental Protection Agency for new internal
11 combustion engines.

12 (2) Reduced or mitigated emissions from all agricultural
13 activities, including, but not limited to, tilling, discing, cultivation,
14 the raising of livestock and fowl, and similar activities, to a level
15 that the district determines does not cause, or contribute to, a
16 violation of a state or federal ambient air standard, toxic air
17 contaminant, or other air emission limitation.

18 (3) Reduced or mitigated all emissions from any farm
19 equipment, underground petroleum fuel tanks, or other similar
20 equipment used in agricultural activities to a level that the district
21 determines does not cause or contribute to a violation of a state or
22 federal ambient air standard, toxic air contaminant, or other air
23 emission limitation.

24 (4) Complied with any other conditions required by state or
25 federal law or district rule or regulation for the source.

26 (b) Subdivision (a) does not apply to those permits required to
27 be issued pursuant to Title I (42 U.S.C. Sec. 7401 et seq.) or Title
28 V (42 U.S.C. Sec. 7661 et seq.).

29 SEC. 10. Section 42310 of the Health and Safety Code is
30 amended to read:

31 42310. A permit shall not be required for any of the following:

32 (a) Any vehicle.

33 (b) Any structure designed for and used exclusively as a
34 dwelling for not more than four families.

35 (c) An incinerator used exclusively in connection with a
36 structure described in subdivision (b).

37 (d) Barbecue equipment that is not used for commercial
38 purposes.

39 (e) (1) Repairs or maintenance not involving structural
40 changes to any equipment for which a permit has been granted.

1 (2) As used in this subdivision, maintenance does not include
2 operation.

3 (f) Nothing in this section shall affect any requirements
4 imposed on a district or a source of air pollution, including, but not
5 limited to, an agricultural stationary source, pursuant to the federal
6 Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

7 SEC. 11. Section 44559.9 is added to the Health and Safety
8 Code, to read:

9 44559.9. The authority shall expand the Capital Access Loan
10 Program established by this article to include outreach to financial
11 institutions that service agricultural interests in the state for the
12 purpose of funding air pollution control measures.

13 SEC. 12. The provisions of the act adding this section are
14 severable. If any provision of this act or its application is held
15 invalid, that invalidity shall not affect other provisions or
16 applications that can be given effect without the invalid provision
17 or application.

18 SEC. 13. No reimbursement is required by this act pursuant
19 to Section 6 of Article XIII B of the California Constitution for
20 certain costs that may be incurred by a local agency or school
21 district because in that regard this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

27 In addition, no reimbursement is required by this act pursuant
28 to Section 6 of Article XIII B of the California Constitution for
29 certain other costs that may be incurred by a local agency or school
30 district because a local agency or school district has the authority
31 to levy service charges, fees, or assessments sufficient to pay for
32 the program or level of service mandated by this act, within the
33 meaning of Section 17556 of the Government Code.

